

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
AT&T Corp. Petition for Declaratory Ruling)	
Regarding Enhanced Prepaid Calling)	WC Docket No. 03-133
Card Services)	

OPPOSITION TO AT&T'S PETITION FOR DECLARATORY RULING

BellSouth Corporation, on behalf of itself and all wholly owned affiliates ("BellSouth"), by its attorneys, files this Opposition to AT&T's Petition for Declaratory Ruling regarding its prepaid calling card services. The Petition is nothing more than an attempt by AT&T to avoid the payment of intrastate access charges for calls that are clearly intrastate in nature. AT&T asserts two positions to support its request; however, both are wholly inconsistent with long standing Commission precedent. First, AT&T asks the Commission to declare calls using its prepaid calling card services to be two calls – one from the caller to the calling card platform and a second from the calling card platform to the called party. Second, AT&T requests that if the Commission does not accept its two-call theory, then it should declare all calls to a calling card platform to be interstate if any parts of the call – the caller, the calling card platform, or the called party – are in different states. For the reasons set forth below, the Commission must reject AT&T's request and deny its Petition.

I. Introduction

The basis of AT&T's Petition is a prepaid calling card service that AT&T markets through the use of retail chains "such as national wholesale club stores or discount retailers, as

well as through other outlets such as military exchanges.”¹ AT&T apparently co-markets the card with the retailers. Use of the card requires the purchaser/caller to call a toll-free number, which connects the caller to a calling card platform. Once on the platform, the caller is given a menu of options on how to complete the call. Additionally, the platform will deliver an advertisement to the caller from the retailer where the card was purchased. After hearing the advertisement, the caller then completes the call. AT&T asserts that the advertisement is a communication from the retailer to the caller that is passed from the platform to the caller once the caller makes the initial connection to the platform. AT&T further asserts that this communication “is an enhanced or ‘information service’ under the Act and well-settled precedent.”²

Based on these facts, AT&T contends that when the caller completes a call using the “enhanced” calling card platform, the call is actually *two* calls, rather than one. AT&T then concludes that the jurisdiction of the two calls must be established separately. The jurisdiction of the first call – the caller to the platform – is based on where the caller is located, as the beginning point, and where the platform is located as the end point. The jurisdiction of the second call – the platform to the called party – is based on where the platform is located, as the beginning point, and where the called party is located as the end point.

II. The Two-Call Theory Has Been Tried and Rejected

Regardless of whether AT&T’s claims that the service in question is an enhanced service are accurate, its assertion that the service represents two calls instead of one is completely unfounded. The Petition is not clear whether AT&T’s foundation for its argument is based on

¹ AT&T Corp. Petition for Declaratory Ruling at 5 (“Petition”).

² *Id.* at 9.

the allegation that the communication delivered at the calling platform is an enhanced service or the mere fact that a "communication" takes place at the platform.³ Thus, it is unclear whether AT&T would argue that the service would constitute two calls if a person were delivering the communication, i.e., the advertisement, live, or if the service is only transformed into two calls by virtue of the fact that the communication, i.e., the advertisement, is a digital recording stored on a computer. No matter AT&T's intent, the outcome is the same. The service is one call and its jurisdiction is determined by the location of the caller and the called party.

The Commission has established clear and controlling precedent that the services AT&T describes represent one call.⁴ Indeed, the Commission has "determined the jurisdictional nature of communications by the end points of the communication and consistently has rejected attempts to divide communications at any intermediate points of switching or exchanges between carriers."⁵ It is hardly worth occupying the Commission's time by restating the complete history of the proceedings that have established that precedent. Not surprisingly, because it would be

³ See *id.* at 10-11 ("The Commission has *never* held, however, that an end-to-end-communication is a single call where (as here) there is a separate 'communication' emanating from an intermediate platform that under any reasoned analysis does create a call endpoint.") (emphasis in original).

⁴ *Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corporation*, 7 FCC Rcd 1619, 1621, ¶ 12 (1992) ("The key to jurisdiction is the nature of the communication itself rather than the physical location of the technology."); *Teleconnect Company v. Bell Telephone Company of Penn., et al.*, E-88-83, *et al.*, *Memorandum Opinion and Order*, 10 FCC Rcd 1626, 1629, ¶ 12 (1995) ("[B]oth court and Commission decisions have considered the end-to-end nature of the communications more significant than the facilities used to complete such communications."); *Southwestern Bell Telephone Company Transmittal Nos. 1537 and 1560 Revisions to Tariff F.C.C. No. 68*, CC Docket No. 88-180, *Order Designating Issues for Investigation*, 3 FCC Rcd 2339, 2341, ¶¶ 25, 28 (1988) (Commission rejected argument that "a credit card call should be treated for jurisdictional purposes as two calls: one from the card user to the interexchange carrier's switch, and another from the switch to the called party" and concluded that "[s]witching at the credit card switch is an intermediate step in a single end-to-end communication.").

⁵ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 & 99-68, *Declaratory Ruling in CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68*, 14 FCC Rcd 3689, 3695, ¶ 10 (1999).

impossible to ignore, AT&T cites these Commission orders and cases in its Petition, but attempts to distinguish these explicitly clear directions of the Commission based on the fact that an advertisement is read to a caller before the call is completed. The delivery of this advertisement, however, is inapposite to determining the jurisdictional nature of a call.

If AT&T's position is that the service is an enhanced service and therefore the information provided at the platform is sufficient to transform the call into two calls, then AT&T is wrong. For jurisdictional purposes, the Commission has consistently based "LEC-provided access to enhanced services providers, including ISPs, on the basis of the end points of the communication, rather than intermediate points of switching or exchanges between the carriers (or other providers)."⁶ Accordingly, even if the Commission accepted AT&T's claim that the prepaid calling card service was an enhanced service,⁷ that position does not support treating the calls made over the platform as two separate calls.

If AT&T's position is that the mere provision of communication to the caller at the platform deems the platform to be an end-point for jurisdictional analysis, then this too is an untenable position for AT&T to try to support. Indeed, it would be the loophole that would swallow the rule. Under this theory, any carrier could manipulate the jurisdictional analysis of a call simply by placing some form of communication at some intermediate stage. A good example would be BOCs that have not yet obtained interLATA relief in all of their in-region

⁶ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-carrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98 and 99-68; *Order on Remand and Report and Order*, 16 FCC Rcd 9151, 9177, ¶ 57 (2001).

⁷ This position seems suspect at best. While AT&T labors to place the communication delivered at the platform within the definition of an enhanced service, the communication itself seems to fall short of the very concept of a service. A typical enhanced service is something the customer wants and intends to buy, e.g., access to the Internet. The service that AT&T's calling card customer is buying is the ability to make a call. It seems highly unlikely that any such customer intended to buy the information, in the form of an advertisement, that is forced on the customer at the platform.

states. If AT&T's theory prevailed, such a BOC could partner with any calling card provider that maintained its platform outside of the BOC's region and become the carrier on the second leg of AT&T's defined two-call plan. That is, the calling card provider would be the carrier for in-region origination to the platform, which would be out of region for the BOC, and the BOC could be the carrier for the out-of-region originated second call and terminate it in its region. AT&T would no doubt oppose such an arrangement as impermissible "provision" of interLATA service by the BOC. Yet, under AT&T's two-call theory, origination of the second call would occur outside of the BOC's region, and thus would be fully permissible pursuant to Section 271(b)(2).

III. The Jurisdiction of a Voice Call Is Determined By the Originating and Terminating Points of the Call

AT&T next argues that if the Commission does not accept its two-call theory that the Commission should at least declare the single call to be jurisdictionally interstate. AT&T ignores past Commission orders that have found "a call that originates and terminates in a single state is jurisdictionally intrastate, and a call that originates in one state and terminates in a different state (or country) is jurisdictionally interstate."⁸ Instead, AT&T focuses on the Commission's analysis of Internet access where the Commission found that connection to the Internet through an ISP was only one call and determined that call to be interstate in nature. AT&T tries to equate this service to its prepaid calling card service. The distinction between the two services, however, is readily apparent.

Internet access involves an easily identifiable origination point but a termination point that is virtually impossible to identify. The Commission reasoned that because of the possibility

⁸ *GTE Telephone Operating Cos.; GTOC Tariff No. 1; GTOC Transmittal No. 1148*, CC Docket No. 98-79; Tariff No. 1; Transmittal No. 1148, *Memorandum Opinion and Order*, 13 FCC Rcd 22466, 22478-79, ¶ 22 (1998).

of both intrastate and interstate communications occurring on the same call, it was impossible to separate the two. Consequently, the Commission applied the mixed-use rule and declared the entire connection to be interstate.

AT&T's prepaid calling card service does not even resemble a mixed-use service. Both the originating and terminating points are easily identifiable. The caller and the called party are both fixed and a circuit connection is established between the two. Accordingly, jurisdiction determination could not be simpler. If the caller is in one state and the called party is in another, the call is interstate; if the caller and the called party are in the same state, the call is intrastate. Moreover, the fact that the caller may call a platform that is in another state from the caller or the called party does not change the jurisdictional nature of the call. Such a finding would allow for easy jurisdictional manipulation simply by creative call routing.

IV. Conclusion

As explained above, the positions espoused by AT&T are totally inconsistent with established Commission precedent. Its Petition should therefore be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that I have this 26th day of June 2003 served the following parties to this action with a copy of the foregoing **BELLSOUTH OPPOSITION TO AT&T'S PETITION FOR DECLARATORY RULING** by electronic filing and/or by placing a copy of the same in the United States Mail, addressed to the parties listed on the attached service list.

/s/ Juanita H. Lee

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